

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, Plaintiff, vs. MAHAMED ABUKAR SAID, Defendant.	0:15-CR-00145-LLP-VLD ORDER ON DEFENDANT'S MOTION TO COMPEL AFFIRMANCE OR DENIAL OF UNLAWFUL ACTS [DOCKET NO. 40]
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In this case pending in the District of Minnesota, all district judges and magistrate judges in that district have recused themselves. See Docket No. 50. Thereafter, the Honorable Lawrence L. Piersol of the District of South Dakota was appointed to preside over this case. See Docket No. 51.

Prior to the District of Minnesota recusing itself, the Honorable Franklin L. Noel, United States Magistrate Judge, resolved several pending motions. See Docket No. 47. Judge Piersol, after being assigned to this case, vacated Judge Noel's order in order to avoid even the appearance of impropriety and has asked this magistrate judge to rule anew on the pending motions previously resolved by Judge Noel. See Docket Nos. 54, 55.

Docket No. 40 is a motion by defendant Mahamed Abukar Said asking for a court order directing the government to affirm or deny, after making a diligent and thorough inquiry, that it obtained evidence against him unlawfully through the use of wiretapping, eavesdropping, or other surveillance techniques. Mr. Said cites 18 U.S.C. § 3504(a)(1) in support of his motion.

That statute provides in pertinent part, “[i]n any trial . . . before any court . . . of the United States—upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act . . .” See 18 U.S.C. § 3504(a)(1).

Here, the court notes that Mr. Said has not proven the required predicate for the application of § 3504(a)(1)—i.e. he is not in trial, and he has not shown that the government obtained evidence as a result of an unlawful act and that he is aggrieved by that evidence. Id. The government responded to the motion that it did not use a wiretap or any other electronic communication interception in the investigation of this case. See Docket No. 45 at p. 10. The government further responded by stating it did obtain legally recorded telephone calls from the jail, that those recordings to date have already been turned over to Mr. Said, and that any future recorded telephone calls will also be turned over to Mr. Said. Id. Accordingly, it is hereby

ORDERED that Mr. Said’s motion to compel affirmance or denial of unlawful acts [Docket No. 40] is denied as moot.

DATED this 25th day of August, 2015.

BY THE COURT:



VERONICA L. DUFFY
United States Magistrate Judge